(1)

Supreme Court, U.S.
FILED
JUN 12 2000
OFFICE OF THE CLERK

00-250

No.

SUPREME COURT OF THE UNITED STATES

DOROTHY SPRAGGINS-GULLY,

Petitioner,

v.

CHICAGO SCHOOL REFORM BOARD OF TRUSTEES,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition For a Writ of Certiorari

Dorothy Spraggins-Gully
Pro Se
444 E. 88th Place
Chicago IL 60619
773-723-4008

4 1pp

Questions Presented For Review

1. Whether the 7th Circuit Court of Appeals can ignore this Court's ruling in Lujan v. National Wildlife Federation, 497 US at 888 (1990) that one sworn averment of a fact essential to the non-movant's case defeats a motion for summary judgment, when Petitioner presented 97 such sworn averments in her response to Respondent's motion for summary judgment.

2. Whether the trial court can limit a Title VII plaintiff to claims for events within 300 days of her filing her EEOC Charge but allow the Respondent to raise alleged poor performance events more than 300 days prior to the filing of said EEOC Charge.

Table of Contents

Rule 14 Contents items . . . . . 1 - 5

Appendix

Memorandum Order Of Magistrate Judge Bobrick
of 5.18.99 . . . . . A-1 - A-17

Memorandum Order of Magistrate Judge Bobrick
of 7.7 99 . . . . . A-18 - A21

Docket entry of 7.7 99 denying FRCP 59(e)
Motion A-22

Order-Opinion of 7th Circuit dated 1.16.00. . A-23 - A-29

Judgment of District Court dated 5.18.99 . . . . . A-30

Judgment of 7th Circuit dated 2.16.00 . . . . . A-31

Order of 7th circuit dated 3.15.00 denying Motion
For Rehearing A-32

Federal Rule of Civil Procedure 56 . . . . . A-33

Rule 14 Contents of a Petition for a Writ of Certiorari

a. Questions presented for review are on previous page.

b. Parties are both listed on the caption, and there are no corporations to discuss.

c. A table of contents follows.

d. No citations to the District Court nor 7th Circuit opinions exist because neither was published.

e. (i) The District Court Judgment was entered May 19, 1999.

(ii) The District Court's Order denying Petitioner's Federal Rule of Civil Procedure 59 (e) Motion was entered July 7, 1999.

The 7th Circuit Court of Appeals' Order denying Petitioner's Motion for Re-consideration En Banc was entered March 15, 2000.

(iii) Not applicable

(iv) The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 USC § 2101(c) because it is filed within 90 days of the 7th Circuit's denial of the En Banc petition and also 28 USC § 1254(1).

(v) Not applicable

f. Federal Rule of Civil Procedure 56 - pertinent text in appendix.

g. (i) not applicable

(ii) The basis for jurisdiction of the District Court was 29 USC § 621 *et seq.*

h . A direct and concise argument amplifying the reasons relied on for the allowance of the writ are that in a FRCP 56 summary judgment motion, the non-moving party is supposed to be able to defeat the motion by showing at least one sworn

statement, essential to the case, by affidavit or deposition or interrogatory response which raises a genuine issue of material fact for the jury to consider. Here, Defendant-Respondent did not take Plaintiff-Petitioner's deposition but instead filed a FRCP 56 motion with several affidavits attached in which the affiants claimed that Petitioner had poor performance as a teacher. In her response, Petitioner by sworn affidavit specifically denied each and every one of the 56 paragraphs and then added 41 additional paragraphs in her affidavit stating events which showed age discrimination by supervisory personnel and retaliation events taken upon Petitioner by said supervisors when Petitioner complained about the age discrimination treatment on the job. The District Court decided that since there were several affidavits from School personnel for Respondent and only one affidavit by Petitioner for herself, even though it had 97 paragraphs, that Petitioner

must do "more" to prove her case and prove that Respondent was lying when it said Petitioner had poor work performance. The 7th Circuit went along with this reasoning, naturally, since it had without this Court's precedent or approval set up this test for pretextual discipline in violation of this Court's specific ruling on summary judgments in the Lujan case - - - in other words, both courts depart from FRCP 56 and want to make a respondent to a FRCP 56 motion prove her case, rather than simply identify sworn statements raising genuine issues of material fact like FRCP 56 requires. This Court should allow the writ to clarify all through the federal court system that summary judgments can not be allowed, based merely on the Judge's guess or perception of whether the genuine, material fact-disputes in employment discrimination cases might be decided by the jury for the employer.

The second issue or reason that this Court should allow the writ is that the District Court required Petitioner to limit her

claims and proof to a time limit of 300 days before she filed her EEOC Charge of age discrimination and retaliation, but allowed Respondent to bring in statements of 'alleged poor performance' more than 300 days before the Charge was filed. This is an unequal application of the law, and Petitioner tried to raise this point by way of her Affidavit in the District and her argument on two specific 'denied-events' in the 7th Circuit, but was ignored. So, this is not something Petitioner is bringing up for the first time in this Court. It is an injustice all through the federal court system that does not appear to have precedent in this Court and needs a ruling to clarify the law.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY SPRAGGINS-GULLY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No 97 C 8885
	)	
CHICAGO SCHOOL REFORM BOARD OF TRUSTEES,	)	
	)	
	)	
Defendant.	)	
	)	

MEMORANDUM ORDER

Before the court is the motion of defendant Chicago School Reform Board of Trustees for summary judgment on the complaint of plaintiff Dorothy Spraggins-Gully.

Plaintiff, an elementary public school teacher, brought this suit under the Age Discrimination in Employment Act ("ADEA") alleging defendant discriminated against her due to

her age, and retaliated against her when she complained of discrimination. She complains of harassment and a five-day suspension without pay. Defendant moves for summary judgment, arguing that it had legitimate, disciplinary reasons for the actions taken against plaintiff.

I. FACTS

When considering a motion for summary judgment, we rely on the parties' Local Rule 12 submissions.[1] Here both sides have submitted Local Rule 2 statements.

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[1] Under Local Rule 12, a party moving for summary judgment must file a:

> statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law...The statement...shall consist of short numbered paragraphs, including with each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forward in the paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

(continued...)

but plaintiff's submission is based entirely on her own affidavit. Thus, even where the asserted fact relates to another individual's position or tenure, plaintiff simply denies it in her affidavit and cites to the affidavit in her 12(n) response. For example, defendant states that Lawrence Head was principal at the school plaintiff worked, Pope Elementary School, from 1970 through 1997. (*Defendant's 12(m) Statement ("Def.St."*), ¶ 2). Plaintiff denies this in her response, and cites her affidavit which simply states: Lawrence Head was not principal of Pope School in 1970. (*Plaintiff's Local Rule 12(n)(3)(a) Response ("Pl.Rsp.")*. ¶ 2). That being the case, we will attempt to make some sense of this dispute's underlying facts.

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[1](...continued)
Local Rule 12(m)(3). The party opposing the motion must then file:

(continued...)

Plaintiff was a tenured teacher at Pope Elementary School in Chicago from 1990 through 1997. (*Def.St.*, ¶ 1). In 1997, she was 56 years of age. (*Def.St.*, ¶ 5). For the last two years of that period, defendant presents a laundry list of disciplinary problems plaintiff presented. (*Def.St.*, ¶ ¶ 12-46, 48, 50). During that time, plaintiff was "written up" by Pope Elementary School principal Lawrence Head no fewer than thirty-eight times. (*Id.*). She was also written up by assistant principal Gloria Thomas. (*Def.St.*, ¶ 49). Head was 58 years of age at that time. (*Def.St.*, ¶ 4).

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[1](...continued)

> a concise response to the movant's statement that shall contain:
> a) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific

(continued...)

Her offenses ranged from tardiness (*Def.St.*, ¶ 12) to harassment of fellow employees (*Def.St.*, ¶¶ 25-26, 29, 33) and attempting to lock a student in a closet. (*Def.St.*, ¶ 41). She also often left her classes unattended during that time (*Def.St.*, ¶¶ 27-28, 34, 37), failed to keep grade records (*Def.St.* ¶¶ 21, 36),

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[1](...continued)

references to the affidavits, parts of any disagreement, specific of the record, and other supporting materials relied upon, and

(b) a statement consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.

(continued...)

and was rude to parents in meetings. (*Def.St.*, ¶¶ 16-18, 40, 43). According to Head, plaintiff's interactions with parents prompted four transfers to other schools. (*Def.St.*, Ex. O). Finally, after a pre-disciplinary hearing, Head suspended plaintiff without pay for 15 days. (*Def.St.*, ¶ 45, 47). The reviewing officer reduced the suspension to five days on December 2, 1996. (*Def.St.*, ¶ 47). According to Head, no other teacher at Pope, regardless of age, had as poor a disciplinary record as plaintiff. (*Def.St.*, ¶ 55).

Plaintiff denies she ever did anything of which she was accused. (*Pl.Rsp.*, ¶¶ 12-46, 48-50). She

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[1](...continued)

Local Rule 12(n)(3). The district court, with the approval of the Seventh Circuit, has long enforced the requirements of these rules. *Huff v. UARCO, Inc.*, 122 F.3d 374, 382 (7th Cir. 1997).

denies that the reviewing officer's findings were valid. (*Pl.Rsp.*, ¶ 47). According to her, every single complaint lodged against her, whether by Head or her colleagues, was phony. (*Plaintiff's Affidavit (Pl.Aff.)*, ¶ 55). She claims Head told her she had been at Pope too long and often referred to her as "your old self." (*Pl.Aff.*, ¶ 52, 75-77). She names several younger teachers who were treated more favorably than her (*Pl.Aff.*, ¶ 74).

II. ANALYSIS

The standards governing summary judgment proceedings are familiar; the Seventh Circuit discussed them in *Santella v. Metropolitan Life Ins. Co.,* 123 F.3d 455 (7th Cir. 1997):

> In a summary judgment action, the moving party shoulders the initial burden of production. It must identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. When the movant satisfies that burden, the nonmovant must set forth specific facts showing there is a genuine issue for trial. If no genuine issue of material fact exists, the sole question is whether the moving party is entitled to judgment as a matter of law. *Santaella,* 123 F.3d at 456 (citations and quotations omitted).

At least as familiar, if not more so, as the standards governing summary judgment, are those applicable to employment discrimination cases.[2] The Seventh Circuit revisited the *McDonnell Douglas* approach in an age discrimination case in *Wilson v. AM General Corp.*, 167 F.3d 1114, 1119 (7th Cir. 1999):

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[2] In her memorandum of law, plaintiff contends that she has "direct evidence of discrimination against her by Head," but does not indicate what this might be. (*Plaintiff's Local 12(n) Memorandum,* at 2). In her affidavit, she mentions that Head made derogatory comments regarding her age. Such comments cannot defeat summary judgment in favor of an employer unless they are proximate and related to the employment decision in question. *Cianci v. Pettibone Corp.*, 152 F.3d 723, 727 (7th Cir. 1998). Plaintiff makes no argument in this regard, but we note that the only comments for which plaintiff gives dates occurred in August and September of 1996 (*Pl.Aff.*, ¶ ¶ 75-77), while plaintiff was not suspended until December of 1996. In addition, plaintiff states that Head alone was not responsible for disciplining staff at Pope. (*Pl.Rsp.*, ¶ 3). In such an instance, plaintiff would also have to show that Head was either responsible for her suspension or able to influence the decision. *Bahl v. Royal Indem.*, 115 F.3d 1283, 1293

(continued...)

> The familiar framework established in *McDonnell Douglas* necessitates a three-step inquiry. First, a plaintiff must establish, by a preponderance of the evidence, a *prima facie* case of discrimination. If the plaintiff makes out a *prima facie* case, a presumption of discrimination arises, and the burden shifts to the defendant to come forward with evidence of a "legitimate, nondiscriminatory reason" for discharging the plaintiff. Finally "the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination."

Wilson, 167 F.3d at 1119 (*quoting Adreani v. First Colonial Bankshares Corp.*, 154 F.3d 389, 393 (7th Cir. 1998). A plaintiff's *prima facie* case consists of showing that: (1) she

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[2](...continued)
(7th Cir. 1997). Further, plaintiff would have to address the action of the reviewing officer. Accordingly, even if plaintiff took the trouble to marshal this evidence, we cannot conclude it would show that the remarks were related to her suspension.

was in the protected age group, (2) she was performing her job to her employer's legitimate expectations, (3) despite her performance, she suffered an adverse employment action, and (4) substantially younger employees who were similarly situated were treated more favorably. *Wilson,* 167 F.3d at 1120 n.1. The issue here, as it almost always is, is plaintiff's job performance.[3]

The defendant offers its records of write-ups

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[3] As usual, the parties here do not dispute that plaintiff is in the protected age group and that she suffered an adverse employment action. Defendant contends that plaintiff cannot show that substantially younger employees with similarly disciplinary records were treated more favorably. (*Defendant Board's Memorandum,* at 12). Plaintiff names several younger employees she claims were treated more favorably because they did not have "phony" disciplinary records compiled against them. (*Pl.Aff.* ¶¶ 57, 74).

and colleague complaints to show that plaintiff was a consistent disciplinary nightmare. Plaintiff claims she never did anything wrong, and relies on her own affidavit to support her position. At the *prima facie* stage of the case, plaintiff's affidavit might be enough. In *Wohl v. Spectrum Mfg., Inc.* 94 F.3d 353 (7th Cir. 1996), for example, the plaintiff's own affidavit was sufficient - in the context of summary judgment - to establish he was meeting employer expectations, where the employer provided no documentary evidence that he was not, and had given him a substantial raise just before firing him. *Wohl,* 94F.3d at 358. Here there is quite a bit of documentary evidence that plaintiff causing frequent problems as opposed to meeting employer expectations.

Beyond the *prima facie* case, however, plaintiff's affidavit is inadequate. Defendant has offered a "legitimate, nondiscriminatory reason" for the actions taken against plaintiff.: her poor disciplinary record. It falls to plaintiff to demonstrate that this reason is a pretext for discrimination. To do so, the plaintiff must do more than show her employer's decision was incorrect; she must show her employer lied about its reason for taking adverse employment action against her. *Abioye v. Sunstrand Corp.,* 164 F.3d 364, 368 (7th Cir. 1998). Plaintiff's own self-serving affidavit, in which she simply denies she ever did anything to deserve disciplinary action, does not demonstrate that defendant is lying. See e.g. *Bahl v. Royal Indem. Co.,* 115 F.3d 1283, 1292 (7th Cir. 1997); *Billups v. Methodist Hosp. of Chicago,* 992 F.2d 1300, 1303 (7th Cir. 1991). In *Abioye*, for example, the

plaintiff relied on affidavits of two managers to show he was a good worker, but the court found this did not mean the plaintiff's employer did not legitimately hold a different opinion. 164 F.3d at 369. Here plaintiff submits unsupported contradictions against documentary evidence compiled by a principal and an assistant principal, the documented complaints of at least three of her co-workers, and the findings of a reviewing officer. This is simply inadequate to raise a genuine issue as to whether defendant's reason for taking action against her is pretextual.

Plaintiff also claims that defendants actions were retaliation against her because she complained to Head and members of the local school counsel that she was being discriminated against. To establish a *prima facie* case of retaliation, plaintiff must show that: (1) she engaged in statutorily protected activity, (2) she

she engaged in statutorily protected activity, (2) she suffered an adverse employment action, and (3) there is a causal connection between the protected activity and the adverse action. *Parkins v. Civil Constructors of Illinois, Inc.*, 163 F.3d 1027, 1038 (7th Cir. 1998). As in a discrimination claim, the defendant then must proffer a legitimate, nondiscriminatory reason for the adverse action. *Id.* Then the plaintiff must prove the reason is pretextual. *Id.* As already discussed, plaintiff fails to raise a genuine issue as to whether defendant's proffered reason for suspending her was a pretext. Consequently, like her discrimination claim, her retaliation claim also fails.

III. CONCLUSION

For the foregoing reasons, the defendant's motion for summary judgment is hereby GRANTED.

ENTERED: _____
EDWARD A. BOBRICK
United States Magistrate Judge

DATE: May 18, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY SPRAGGINS-GULLY	)	
	)	
Plaintiff	)	
	)	
vs..	)	No. 97 C 8885
	)	
CHICAGO SCHOOL REFORM BOARD OF TRUSTEES,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM ORDER

Before the court is the motion of plaintiff Dorothy Spraggins-Gully to alter the judgment entered in this case on May 19, 1999.

This court entered summary judgment in favor of defendant Chicago School Reform Board of Trustees in this employment discrimination case, finding that defendant had established that there was no genuine issue that it suspended plaintiff for legitimate

disciplinary reasons. Plaintiff now moves to alter that judgment pursuant to Fed.R.Civ.P. 59(e), arguing that the court erred in its analysis.

Motions to alter judgment serve a limited purpose: to correct manifest errors of law or present newly discovered evidence. *In the Matter of Prince,* 85 F.3d 314, 325 (7th Cir. 1996). A party is not permitted to simply reiterate arguments that the court has already considered or rehash previously raised arguments. *Caisse Nationale de Credit Agricole v. CBI Indus. Inc.* 90 F.3d 1264, 1270 (7th Cir. 1996). The court's opinion is not a "mere first draft subject to revision and reconsideration at a litigant's pleasure." *Quaker Alloy Casting Co. v. Gulfco Indus., Inc.,* 123 F.R.D. 282, 288 (N.D.Ill. 1988). Here the plaintiff's motion merely wastes the court's time by restating arguments already rejected in the previous round of briefing.

The plaintiff in this case may not have violated Local Rule 12, but certainly abused it by relying on nothing but her own self-serving affidavit in denying nearly every fact defendant presented. This was the start of her downfall. The issue in this case came down to whether defendant's proffered reason for suspending plaintiff - consistent record of disciplinary problems - was worthy of credence. To show that it was not, it fell to plaintiff to *go beyond her own allegations and denials. See Abioye v. Sundstrand Corp.,* 164 F.3d 364, 368-69 (7th Cir. 1998); *Bahl v. Royal Indem. Co.,* 115 F.3d 1283, 1292 (7th Cir. 1997); *Billups v. Methodist Hosp. of Chicago,*922 F.2d 1300, 1303 (7th Cir. 1991). Here plaintiff submitted - and now resubmits - unsupported contradictions against documentary principal, the documented complaints of at least three of her co-workers, and the findings of an independent

reviewing officer. This was inadequate to raise a genuine issue as to whether defendant's reason for taking action against her is pretextual during the summary judgment proceedings. It still is inadequate when contained in an ill-conceived Rule 59(3) motion.

CONCLUSION

For the foregoing reasons, the plaintiff's Rule 59(e) motion to alter judgment is hereby DENIED.

ENTERED: _____
EDWARD A. BOBRICK
United States Magistrate Judge

DATE: July 7, 1999

United States District Court, Northern District of Illinois

Magistrate Judge Edward A. Bobrick

Case Number 97 C 8885 Date 7/7/1999

Case Title Dorothy Spraggins Gully v. Chicago Reform Board

Docket Entry

Enter memorandum Order. Plaintiff's Rule 59(e) motion to alter judgment is denied.

s/ Edward A. Bobrick

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued January 25, 2000
Decided February 16, 2000

Before

Hon. JESSE E. ESCHBACH, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

No. 99-2919

DOROTHY SPRAGGINS-GULLY,
Plaintiff-Appellant,

v.

THE BOARD OF EDUCATION OF THE
CITY OF CHICAGO,
Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division

No. 97 C 8885

Edward A. Bobrick, *Magistrate Judge*

ORDER

After repeated reprimands and a disciplinary action that resulted in a five-day suspension without pay, Dorothy Spraggins-Gully ("Gully") filed suit alleging her employer, the Board of Education of the City of Chicago (the "Board"), discriminated against her because of her age and retaliated when she complained of discrimination, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 623. The district court granted summary judgment for the Board on both claims, assuming the existence of a prima facie case, but holding that Gully failed to demonstrate a triable issue concerning whether the Board's proffered reason for disciplining her was pretextual. We affirm.

I.

The Board hired Gully as an elementary school teacher in 1967, assigning her to Pope Elementary School. From 1995 to 1997, Pope Elementary School principal Lawrence Head frequently cited Gully for myriad violations of the Board's employee discipline code. Her alleged infractions included being tardy, harassing fellow employees, leaving her classroom unattended, failing to maintain grade records, being rude to parents, and attempting to lock a student in a closet. In October 1996, Head charged Gully with 10 violations of the employee discipline code, and scheduled a pre-disciplinary hearing. After the hearing, Head gave Gully a written reprimand and suspended her for 15 days without pay. A reviewing officer reduced the suspension to five days.

After the suspension, Gully was cited for additional code violations. In March 1997, assistant principal Gloria

Thomas notified Gully that she risked suspension unless she started complying with the employee discipline code. Specifically, Thomas warned Gully that negligently supervising students, behaving inappropriately or insubordinately; and assaulting, threatening, intimidating, or abusing supervisors would not be tolerated. On April 3, 1997, Head charged Gully with seven employee discipline code infractions, and scheduled another pre-discipline hearing.

Several days later Gully filed charges of age discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC). The EEOC issued Gully a right-to-sue letter in September 1997. In December 1997, Gully filed suit in district court alleging that the Board had cited her for employee code violations and suspended her solely because of her age, 56.[1] She also alleged that because she had complained to Head that he was citing her only because of her age, the Board retaliated by harassing her with continued fabricated citations, and by filing a false report with the Illinois Department of Children & Family Services alleging that Gully had abused or neglected a child. In addition, Gully alleged that Thomas had falsely complained to the police that she had been assaulted by Gully, resulting in the State's Attorney charging her with battery.

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[1] Gully and the Board consented to having all proceedings conducted by a magistrate judge pursuant to 28 U.S.C. § 636(a).

The Board filed a motion for summary judgment, arguing that Gully could not establish a prima facie case because she had not been satisfying the Board's legitimate expectations. In addition, the Board explained that Gully had been disciplined because of her continued violations of the employee code, not because of her age or because she had complained of discrimination. The district court granted summary judgment to the Board because Gully failed to present any evidence tending to show that the Board had lied about its reason for disciplining her. Gully timely filed a notice of appeal.

II.

We review a grant of summary judgment de novo, construing the evidence in the light most favorable to the non-moving party. Mills v. Health Care Serv. Corp., 171 F.3d 450, 455 (7th Cir 1999). We take particular care in apply this standard of review in employment discrimination cases where intent is an essential element. Id. "Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law" *Shermer v. Illinois Dept. of Transp.*, 171 F.3d 475, 477 (7th Cir. 1999).

The district court granted summary judgment for the Board on the ground that Gully failed to produce any evidence demonstrating that the Board's proffered nondiscriminatory reason for disciplining her was pretext for age discrimination or retaliation. *Abioye v. Sundstrand Corp.* 164 F.3d 364, 368 (7th Cir. 1998) (permitting district courts to avoid deciding whether plaintiff has met her prima facie case, if defendant proffers

nondiscriminatory reason and there is no showing of pretext), but see *Coco v. Elmwood Care, Inc.*, 128 F.3d 1178 (7th Cir. 1997) (emphasizing that district courts should determine if prima facie case has been established before reaching question of pretext). As the district court concluded, Gully's denials that she ever did anything wrong do not show that the Board lied about its reason. In *Billups v. Methodist Hospital of Chicago,* 922 F.2d 1300, 1303 (7th Cir. 1991), as in this case, the plaintiff denied that she had violated her employer's rules. We stated that the plaintiff's self-serving remarks without more were insufficient to cast doubt on the employer-defendant's proffered explanation for an adverse employment action. Similarly, the plaintiff in *Bahl v. Royal Indemnity Co.,* 115 F.3d 1283, 1291-92 (7th Cir. 1997), attempted to show that the defendant's reason for terminating him-poor performance-was pretextual by pointing to evidence that purportedly demonstrated that his work had not been as bad as the defendant claimed. We concluded that, although the plaintiff's evidence may have shown that the defendant was mistaken about the plaintiff's performance, it did not demonstrate that the defendant lied about its reason for terminating the plaintiff. Thus, because Gully, like the plaintiffs in *Billups* and *Bahl*, failed to point to any evidence demonstrating pretext, the district court properly granted summary judgment to the Board.

Gully argues, however, that two pieces of evidence-a letter from the Illinois Department of Children and Family Services finding that the Board had filed a false report of child abuse or neglect against her, and a Cook County Circuit Court judgment acquitting Gully of the battery charge brought by assistant principal Thomas-demonstrate that the Board's proffered reason was pretextual. But Gully overlooks the fact that neither of these documents is in the record. Gully failed to

include either document in her response to the Board's summary judgment motion. After the district court rendered its decision, Gully brought a Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment, and also requested leave to supplement the record with both documents. The district court denied both motions. This court cannot consider evidence that was not before the district court. See *Stagman v. Ryan,* 176 F.3d 986, 994 (7th Cir.), *cert. denied,* 120 S. Ct. 446 (1999). Gully makes no argument concerning the district court's denial of her motion to supplement, consequently, that issue is waived. See *Thomas v. United States,* 189 F.3d 662, 665 (7th Cir. 1999).

Last, Gully contends that Head's references to her as "your old self" on three occasions in August and September 1996 demonstrate that the Board's proffered reason for disciplining her was pretextual. We have held similar remarks insufficient to evidence discriminatory animus. *Hoffman v. MCA, Inc.,* 144 F.3d 1117, 1122 (7th Cir. 1998). Like the comments made in *Hoffman*, Head's comments were stray workplace remarks not sufficiently linked to the decision to discipline Gully *Id.* This court has previously stated that remarks like Head's cannot defeat summary judgment unless they were "both proximate and related to the employment decision in question." *Bahl,* 115 F.3d at 1293. Here, evidence of both temporal proximity and relatedness is lacking. More than a month passed before Head brought the first employee discipline code violation charges against Gully. Head brought the second round of charges more than six months later. With respect to the report made to the Illinois Department of Children and Family Services, and the battery charge, Gully does not state when either occurred. Moreover, Gully has not

produced any evidence showing that Head's "old self" remarks were made in response to her inquires as to why she continued to be cited for and charged with violations of the employee discipline code. Consequently, she has failed to link Head's remark to the decision to discipline her. *Hoffman,* F.3d 1122.

Accordingly, because Gully failed to present any evidence that the Board's proffered reason for disciplining her was pretextual, we AFFIRM.

United States District Court

Northern District of Illinois

Eastern Division

Judgment in a Civil Case

Dorothy Spraggins-Gully

v. Case No. 97 C 8885

Chicago School Reform Board

Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that defendant Chicago School Reform Board of Trustees' motion for summary judgment on the complaint of plaintiff Dorothy Spraggins-Gully is granted.

Dated 5/18/1999

Michael W. Dobbins, Clerk of Court

United States Court of Appeals For the Seventh Circuit

Chicago, Illinois 60604

JUDGMENT - WITH ORAL ARGUMENT

Date: February 16, 2000

BEFORE:

Honorable Jesse E. Eschbach, Circuit Judge

Honorable John L. Coffey, Circuit Judge

Honorable Frank M. Easterbrook, Circuit Judge

No. 99 - 2919

DOROTHY SPRAGGINS-GULLY
Plaintiff - Appellant
v.
CHICAGO SCHOOL REFORM BOARD OF TRUSTEES,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 97 C 8885, Edward A. Bobrick, Magistrate Judge

The judgment of the District court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.
(1061-110393)

United States Court of Appeals for the Seventh Circuit
Chicago Illinois 60604

March 15, 2000

Before :

Hon. Jesse E. Eschbach, Circuit Judge

Hon. John L. Coffey, Circuit Judge'

Hon. Frank H. Easterbrook, Circuit Judge

DOROTHY SPRAGGINS - GULLY
Plaintiff-Appellant

No. 99 - 2919

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO,
Defendant-Appellee

Appeal from the United States District Court For The Northern District of Illinois Eastern Division
No 97 C 8885

Edward Bobrick
Magistrate Judge

ORDER

On consideration of the petition for rehearing en banc filed by Plaintiff-Appellant in the above-entitled cause, no judge in active service has requested a vote thereon, and all of the judges on the panel have voted to deny a rehearing. Accordingly, IT IS ORDERED that the aforesaid petition for rehearing en banc be, and the same is hereby DENIED.

Federal Rule of Civil Procedure 56. Summary Judgment

(c) The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law...

(e) ...When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.